

## Chapter 7

# Human resources and labor relations

Cities need competent, enthusiastic and hardworking employees.

Recruiting and hiring the best employees, treating them fairly, and training them to do the job is central to a city's success. Personnel costs are also the lion's share of a city's operating budget - typically, about 60% of a city budget - so recruiting, training and retaining good employees is time well spent.

It's tempting to think that in a small town or city, relations with employees can be kept informal, and that it's OK to be casual about hiring, work rules, or other job-related practices. But this is a big mistake. Employee relations can be a source of real legal and financial liability if not handled properly; and it only takes one disgruntled employee or one untrained supervisor to disrupt city hall and derail the ability of city officials to focus on making the city a great place to live.

It is difficult to keep up-to-date on important personnel issues, because laws and regulations keep changing, and small cities can rarely afford a professional personnel manager with expertise in human resources and labor relations. But having clear, consistent rules and personnel practices can prevent a lot of trouble. And it can provide an orderly way to resolve problems when they do arise, before they spin out of control.

Here are just a few of the components of a good system of human resources management. While most of these may be more common in larger cities, they also have applications for smaller municipalities.

- A recruitment process that tests for, hires and promotes applicants based on merit and the ability to perform the essential functions of the position;
- Personnel policies that outline work rules, employee benefits, policies on overtime, paid and unpaid leave, employee conduct, and discipline;
- A classification and compensation plan that includes job descriptions for all positions, identifying the method for setting salaries;
- An orientation program for new and newly promoted employees;
- A performance evaluation process;
- A training program for employees, especially supervisors, on key laws such as the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA) and on workers' compensation, discipline, or grievance procedures;
- A trained person to coordinate labor relations and negotiate with employees regarding wages, hours and working conditions; and
- A grievance process to address employee concerns and serious complaints.

For cities that may be lagging behind in some of these areas, there are many resources available to help improve their human resources systems.

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## **Hiring the best people**

There are few employers who can say that every employee working in their organization is the ideal person for the job. But with a little effort, the chances of attracting and retaining high-quality employees can be greatly increased.

Except for police and fire personnel (see the Civil Service section of this chapter) there are no specific legal requirements that a city must follow to recruit and select new employees. However, employees must be hired fairly. Many cities have established their own hiring policies, which usually include procedures for attracting enough qualified candidates to compete for job openings, screening those applicants, and selecting the most qualified individual for the available position. It is essential that this process not discriminate against protected classes of employees, either by intent or impact. Therefore, selection decisions must be based on job-related criteria that measure knowledge, skills, abilities and attributes that relate directly to successful job performance.

Under the Washington Law Against Discrimination (WLAD), employers may not refuse to hire someone, fire an employee, or discriminate against an employee in pay or other terms or conditions of employment, because of the person's race, creed, color, national origin, sex, marital status, age, disability, retaliation, sexual orientation/gender identity, honorably discharged veteran or military status, or use of a trained dog guide or service animal by a person with a disability. Current law exempts employers with fewer than eight employees.

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## **Civil service for police and fire**

Most police and fire employees are covered by state civil service law, which governs hiring and provides a process for hearing appeals to disciplinary actions. Cities with more than two full-time police officers (including the chief) or with any full-time firefighters are required to establish a three-member civil service commission. Appointments to the commission are usually made by the mayor or city manager. The commission must establish rules for the operation of the city's civil service system that are consistent with state law, administer tests to determine the relative qualifications of candidates, and hear appeals or complaints.

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## **Volunteer firefighters and reserve officers**

The Board for Volunteer Firefighters and Reserve Officers (Board) provides workers' compensation benefits and a small retirement pension for volunteer firefighters and reserve police officers in Washington. All volunteer firefighters must be covered for workers' comp, and coverage for reserve police officers is optional. Cities must report volunteers to the Board, remit the appropriate fees, and form a local board of trustees, with the responsibility to approve retirement forms, remittance forms, and claims for payment, and to administer claims due to injuries.

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## Labor relations

It's not surprising that most small city councils and staff struggle with labor relations issues. The state law, the Public Employees Collective Bargaining Act (RCW 41.56), is complex and technical for those unfamiliar with it. It also differs significantly in some key areas from labor law that applies to private sector jobs. And unlike private sector employers, most cities have a large percentage of their personnel covered by union contracts.

Almost all public employees in Washington have a legal right to form unions or associations and collectively bargain with their employers. A city cannot change wages, hours or working conditions for union members without bargaining these issues with them. Collective bargaining is the mutual obligation of employees and their employers to meet at reasonable times and to bargain in good faith. However, this obligation does not compel either party to agree to a proposal.

It is an unfair labor practice for an employer to interfere with, restrain or coerce public employees in the exercise of their right to unionize. A state agency, the Public Employment Relations Commission (PERC), regulates the relationships between public employers and their employees concerning issues like union representation and unfair labor practices. City officials with questions about union issues should contact PERC for guidance.

All paid fire departments, and all police departments in cities over 2,500 in population, have access to interest arbitration. This means that when an impasse in bargaining occurs, the issues in dispute are turned over to an outside arbitrator to make the decisions on wages, benefits and other contract language. This can create a unique dynamic in police and fire negotiations. The arbitrator has the power to set the terms of the contract - obligating the city to provide wages or benefits to police or fire employees that other employees don't get - and that perhaps the city can't afford.

Because of the complexity of labor negotiations, and the impact of wages and benefits on city budgets, some cities hire professional consultants to bargain on behalf of management. For smaller cities with limited resources, this may not be affordable.

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## **Employee salaries and benefits**

In order to attract, retain, and motivate qualified employees, cities try to establish and maintain compensation and benefit levels that are competitive within their labor markets and that are internally fair.

It's hard to decide how much to pay employees, and it's made harder when cities just can't afford to pay the wages they would like to.

AWC produces an annual salary survey that allows city officials to see what comparably-sized cities pay their employees, what benefits they provide, and how much the employer and the employee each pay for those benefits.

Most cities offer a variety of benefits - vacation, sick leave, pensions, insurance benefits (health, dental, vision, disability, life insurance, etc.). Benefits are important to employees and can be costly for the employer. Therefore, the total cost of compensation (including both salary and benefits) should be carefully reviewed.

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## **Public employee pensions**

Washington's public pension systems are among the most complex in the nation. While the Department of Retirement Systems (DRS) administers eight different systems, most city and town employees are members of either the Public Employees' Retirement System (PERS) or the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF).

In most cases, employers and employees contribute a percentage of employee wages into the appropriate system each month. The rules governing eligibility for membership, when an employee can retire, and how retirement benefits are calculated are extremely complicated and vary widely.

- PERS Plan 1 is a defined benefit plan that provides full pension benefits based on years of service - members are eligible after 30 years of employment.
- PERS Plan 2 is a defined benefit plan that provides full pension benefits after the member reaches age 65.
- LEOFF Plans 1 and 2 are defined benefit plans that provide full pension benefits based on the member's age at retirement. (Employers of LEOFF Plan 1 retirees are also responsible for their lifetime medical costs.)
- PERS Plan 3 is a defined benefit plan that includes a member-funded defined contribution component. Full pension benefits are provided after the member reaches age 65.

Cities and towns also need to be aware that there are strict rules governing the ability to hire employees (or independent contractors) who have retired from one of the state systems. Employers should be cautious and make sure they are following DRS rules and established common law regarding hiring independent contractors, or they could be on the hook for significant financial penalties.

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## **Personnel policies**

Personnel policies and procedures constitute the basic “rules of the game” for employer-employee relations. They help to ensure that employees are treated in an equitable and consistent manner and in compliance with legal requirements. Personnel policies and procedures should be regularly reviewed and updated to reflect new legislation and organizational changes.

Current, clearly-written personnel policies help avoid lawsuits, promote consistency, and contribute to employee morale. Failure to follow its own personnel policies is one of the most potentially expensive liability exposures a city can have.

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## **The Fair Labor Standards Act (FLSA) and Washington State overtime law**

The laws governing overtime pay are very complicated, and even veteran human resources professionals and payroll staff have a hard time sorting through the various federal and state rules and regulations. Complex, often contradictory court decisions add to the confusion, exposing cities to tremendous liability for back overtime wages.

Generally, the FLSA requires that overtime pay must be paid at a rate of not less than one and one-half times an employee’s regular rate of pay for each hour worked in excess of 40 hours in a week, although there are exceptions. Some employees are exempt from the overtime provisions of the law, in some cases compensatory time may be granted instead of overtime pay, and there are different rules for when overtime is required for police and fire employees.

While many of the provisions of the state overtime law and the FLSA are identical, there are some differences. When there is a difference, the city must comply with the law that is most beneficial to the employee. In addition to overtime, local, state, and federal laws set the minimum hourly wage that employees must be paid. Although the federal minimum wage is \$7.25, the minimum wage in Washington is significantly higher - \$9.47 per hour since January 1, 2015. The state minimum wage is indexed to increase every January based on an increase in the Consumer Price Index (CPI). In years when the CPI decreases, the state minimum wage may remain the same.

It’s very important to keep up-to-date on this ever-changing area of law.

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## **Laws that protect employees from discrimination and unfair practices**

A wide range of federal and state laws and regulations govern employment decisions and protect employees from discrimination and other unfair practices and ensure the safety of employees at work. These laws have become increasingly complex, and there are ever more inconsistencies between state and federal regulations. Because city officials generally need more information on this issue than this brief chapter can provide, they should take advantage of the resources listed, and attend training when it is offered.

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## Resources

### **Labor Relations Institute, AWC**

[awcnet.org/DataResources/Resourcesbytopic/TabId/941/PID/2423/CategoryID/96/CategoryName/HRLaborrelations/Default.aspx](http://awcnet.org/DataResources/Resourcesbytopic/TabId/941/PID/2423/CategoryID/96/CategoryName/HRLaborrelations/Default.aspx)

### **Human resources labor relations resources, AWC**

[awcnet.org/DataResources/Resourcesbytopic/TabId/941/PID/2423/CategoryID/96/CategoryName/HRLaborrelations/Default.aspx](http://awcnet.org/DataResources/Resourcesbytopic/TabId/941/PID/2423/CategoryID/96/CategoryName/HRLaborrelations/Default.aspx)

### **Personnel topic page, MRSC**

[mrsc.org/Home/Explore-Topics/Personnel.aspx](http://mrsc.org/Home/Explore-Topics/Personnel.aspx)

### **Hiring the best people**

#### **Hiring Procedures topic page, MRSC**

[mrsc.org/Home/Explore-Topics/Personnel/Beginning-Employment/Hiring-Procedures.aspx](http://mrsc.org/Home/Explore-Topics/Personnel/Beginning-Employment/Hiring-Procedures.aspx)

#### **Job Descriptions - sample documents, MRSC**

[mrsc.org/Home/Research-Tools/Sample-Documents/Job-Descriptions.aspx](http://mrsc.org/Home/Research-Tools/Sample-Documents/Job-Descriptions.aspx)

### **Civil service for police and fire**

#### **Model Civil Service Rules for Washington State Local Governments, MRSC**

[mrsc.org/getmedia/0EA044F8-D10F-4EC6-9A37-E2AB0A41B034/m58civserv3.aspx](http://mrsc.org/getmedia/0EA044F8-D10F-4EC6-9A37-E2AB0A41B034/m58civserv3.aspx)

#### **Washington State Board for Volunteer Fire Fighters and Reserve Officers**

[bvff.wa.gov](http://bvff.wa.gov)

### **Labor relations**

#### ***Basics of Collective Bargaining*, AWC**

[awcnet.org/DataResources/Resourcesbytopic/HRLaborRelations/LaborRelationsResources.aspx](http://awcnet.org/DataResources/Resourcesbytopic/HRLaborRelations/LaborRelationsResources.aspx)

#### **CPI Data Summary**, compiled by AWC, Bureau of Labor Statistics (BLS)

[awcnet.org/DataResources/Resourcesbytopic/TabId/941/ArtMID/2423/ArticleID/997/CPI-data.aspx](http://awcnet.org/DataResources/Resourcesbytopic/TabId/941/ArtMID/2423/ArticleID/997/CPI-data.aspx)

#### **Washington State Public Employer Overtime Guide**, Summit Law Group for AWC

[awcnet.org/DataResources/Resourcesbytopic/HRLaborRelations/LaborRelationsResources.aspx](http://awcnet.org/DataResources/Resourcesbytopic/HRLaborRelations/LaborRelationsResources.aspx)

#### **Washington State Public Employment Relations Commission**

[perc.wa.gov](http://perc.wa.gov)

## **Employee salaries and benefits**

### **Employee Benefit Trust, AWC**

[awcnet.org/HealthBenefits/Benefits.aspx](http://awcnet.org/HealthBenefits/Benefits.aspx)

### **Salary and Benefit Survey, AWC**

[awcnet.org/DataResources/resourcesbytopic/SalaryBenefitSurvey.aspx](http://awcnet.org/DataResources/resourcesbytopic/SalaryBenefitSurvey.aspx)

### **Washington Department of Retirement Systems (DRS)**

[drs.wa.gov/](http://drs.wa.gov/)

## **Personnel policies**

### **Personnel Policy Manuals topic page, MRSC**

[mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Personnel-Policy-Manuals.aspx](http://mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Personnel-Policy-Manuals.aspx)

### **Washington State Public Employer Overtime Guide, AWC**

[awcnet.org/DataResources/Resourcesbytopic/HRLaborRelations/HRResourcesIssues.aspx](http://awcnet.org/DataResources/Resourcesbytopic/HRLaborRelations/HRResourcesIssues.aspx)

## **Laws that protect employees from discrimination and unfair practices**

### **ADA Guide for Small Towns, U.S. Department of Justice (DOJ)**

[ada.gov/smtown.htm](http://ada.gov/smtown.htm)

### **Compliance Assistance - Wages and the Fair Labor Standards Act,**

Washington Department of Labor and Industries (LNI)

[dol.gov/whd/flsa/](http://dol.gov/whd/flsa/)

### **Family and Medical Leave Act (FMLA), U.S. Department of Labor**

[dol.gov/whd/fmla/](http://dol.gov/whd/fmla/)

### **Required Workplace Posters, Washington Department of Labor and Industries (LNI)**

[lni.wa.gov/FormPub/results.asp?Section=8&SubSection=0&Show=0&Sort=0&DocType=0](http://lni.wa.gov/FormPub/results.asp?Section=8&SubSection=0&Show=0&Sort=0&DocType=0)

### **Washington State Human Rights Commission**

[hum.wa.gov/](http://hum.wa.gov/)

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## **Know the law**

- RCW 49.60 - Washington law against discrimination
- WAC 162-12-140 - Pre-employment Inquiries, Human Rights Commission
- RCW 41.08 - Civil service for fire
- RCW 41.12 - Civil service for police
- RCW 41.56 - Public Employees Collective Bargaining Act (PECBA)
- DOL Fair Labor Standards Act [insert link to dol.gov/whd/flsa](http://dol.gov/whd/flsa)
- RCW 49.46 - WA State Minimum Wage Act
- RCW 49.60 - Washington Law Against Discrimination
- Federal Equal Employment Opportunity Laws, U.S. Equal Employment Opportunity Commission
- The Americans with Disabilities Act (ADA), U.S. Equal Employment Opportunity Commission
- Federal Family & Medical Leave Act, U.S. Dept. of Labor

